



Inspector General
Kirt West

July 27, 2006

Michael S. Greco, President
American Bar Association
321 North Clark Street
Chicago, Illinois 60610-4714

Dear Mr. Greco:

I am in receipt of your letter dated July 19, 2006, regarding the Legal Services Corporation (LSC) Office of Inspector General (OIG) investigation of California Rural Legal Assistance, Inc. (CRLA). The OIG normally would not discuss with a third party an ongoing investigation; usually we would not even acknowledge there is an investigation pending, out of fairness to the subject. In this case, however, CRLA publicly disclosed this fact and the American Bar Association (ABA) commissioned a subcommittee to attempt to involve itself in the matter. I, therefore, believe it appropriate to reply but will limit this to general discussion of topics CRLA placed in the public domain.

At the outset, I would like to make clear that the OIG has not at any time undertaken any effort to obtain from CRLA information protected by the attorney-client privilege or other applicable limitations on OIG access to information. Rather, on March 16, when sending its document and data request the OIG stated in a letter to CRLA: "As mentioned, the OIG does not have access to privileged attorney-client communications. In formulating the attached data and document requests, the OIG has made every effort to ensure that we are not asking for records containing such communications. If you believe that any particular category of data or documents requested includes confidential attorney-client communications that should be withheld from production, or if you have any other questions or concerns, please contact [OIG Counsel] to discuss the matter." We have reiterated this notion in our subsequent discussions with CRLA.

I would like to specifically address the OIG's request for client names. As I read your letter to acknowledge, Congress has determined it is appropriate for the OIG to have access to client names, except in the rare instance when the name is protected by the attorney-client privilege. Your letter also mentions the ABA's conclusion that the scope of the attorney-client privilege in determining appropriate disclosure of information to funding sources is a matter of state law. Your letter extends this further to suggest that LSC should look also to state law and the rules of professional conduct in determining the appropriate scope of LSC and OIG access to grantee information that is not privileged.¹ Prior to enactment of LSC's 1996 appropriations Act, your argument may have had some appeal. Before that time, some read section 1006(b)(3) of the LSC Act to protect certain non-privileged grantee information, including client names, from LSC access based on state laws and rules of professional responsibility. The 1996 appropriations Act, however, makes LSC access to specified records, including client names, subject only to the federal attorney-client privilege, section 1006(b)(3) of the LSC Act notwithstanding.² Neither LSC nor the OIG may substitute a different judgment than that of Congress in this regard, and ignore the congressional determination that when needed, client names be made available to LSC and the OIG in carrying out their statutory responsibilities.

Finally, I wish to assure you that before exercising its authority to request access to client names, the OIG carefully considered the wisdom of doing so with respect to applicable law, the co-equal rights of the poorest among us, and a desire to approach the situation constructively and responsibly. Aware of the sensitivity of certain grantee information and the potential demands on the grantee's time and resources, my office

¹ Having reviewed the information provided, my counsel informs me it is unlikely that California law, were it applicable, would protect client names from OIG access. My counsel advises that under the authorities cited in your letter, California does not grant client identities absolute protection. For example, *Hooser v. Superior Court*, 84 Cal. App.4th 997, 1005-1006 (2000) stands for the proposition that the determination whether California's constitutional right to privacy protects client names in the discovery context requires a balancing of privacy rights against the public interest in disclosure. Although this is not a discovery matter, I hope you will agree that the IG Act, the LSC Act, and section 509(h) of LSC's 1996 appropriations Act evince a strong public interest in appropriate investigation into credible allegations of violations of federal law, including when required, OIG access to client names in the possession of recipients of federal grant funds.

² Section 509(h) of the 1996 appropriation Act provides: "Notwithstanding section 1006(b)(3) of the Legal Services Corporation Act (42 U.S.C. 2996e(b)(3)), financial records, time records, retainer agreements, client trust fund and eligibility records, and client names, for each recipient shall be made available to any auditor or monitor of the recipient, including any Federal department or agency that is auditing or monitoring the activities of the Corporation or of the recipient, and any independent auditor or monitor receiving Federal funds to conduct such auditing or monitoring, including any auditor or monitor of the Corporation, except for reports or records subject to the attorney-client privilege."

undertook a critical review to determine precisely what information was required for us to conduct our congressionally mandated work and whether alternative means of obtaining the information would suffice. I assure you that I am ever mindful of the responsibility that comes with the authority entrusted to me as Inspector General, and carefully consider all relevant factors before determining its appropriate exercise.

Sincerely,



Kirt West
Inspector General

cc: Frank Strickland, Chairman
Legal Services Corporation

Helaine Barnett, President
Legal Services Corporation

William O. Whitehurst, Chairman
ABA Standing Committee on Legal Aid and Indigent Defendants

R. William Ide, Chairman
ABA Presidential Task Force on Attorney-Client Privilege